

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRAIN JOHNSTON & NILE CHARLES,

Plaintiff,

-against -

APPLE INC. & OMNISCIENT INVESTIGATION  
CORP.,

Defendants.

09-CV-5269 (JSR)

**DECLARATION OF DAVIND L.  
METZGER IN SUPPORT OF  
MOTION TO DISMISS PURSUANT  
TO RULE 12(b)(6)**

**DECLARATION OF DAVID L. METZGER IN SUPPORT OF MOTION PURSUANT  
TO RULE 12(b)(6) TO DISMISS THE 42 U.S.C. § 1982 CAUSE OF ACTION**

I, David L. Metzger, pursuant to 28 U.S.C. § 1746, under the penalties of perjury, declare that the following is true and correct:

1. I am an attorney duly admitted to practice before the United States District Court for the Southern District of New York. I am an associate with the firm of Lewis Johs Avallone Aviles, attorneys for the defendant, Omniscient Investigation Corp. ("Omniscient"), and I make this Declaration in support of the defendant, Omniscient's, motion for judgment dismissing the Second Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6).
2. Attached as Exhibit "A" is a true and correct copy of the plaintiffs [First] Amended Complaint filed in the above-captioned matter.
3. Attached as Exhibit "B" is a true and complete copy of the transcript of the conference held before the Hon. Judge Jed S. Rakoff on June 28, 2011.

4. Attached as Exhibit "C" is a true and complete copy of the plaintiffs' Second Amended Complaint.

Dated and Executed:

New York, New York  
August 10, 2011



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CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of August, 2011 the following parties were served via electronic mail and via Electronic Court Filing a true copy of the defendant, Omniscient Investigation Corp.'s, Declaration of David L. Metzger In Support Of Motion To Dismiss Pursuant To Rule 12(b)(6).

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